



## **MINUTES**

### **House Select Committee on the State's Role in Immigration Policy**

Wednesday, February 29, 2012

1:00 PM

Room 643, Legislative Office Building

The House Select Committee on the State's Role in Immigration Policy met on Wednesday, February 29, 2012 at 1:00 p.m. in room 643 of the Legislative Office Building. Representatives Iler, Warren, Brisson, Cleveland, Folwell, Faircloth, Jones, Pierce, Stevens and Starnes attended.

Representative Iler presided and welcomed the committee members, staff and visitors. The visitor's log is attached to these minutes as Attachment #1. A motion to approve the minutes from the January 29<sup>th</sup> meeting (Attachment #2) was made by Representative Brisson and the motion carried. Representative Iler explained that today's speakers were invited to present the industry side of the immigration issue. The following groups were invited and declined to speak: Immigration and Customs Enforcement (ICE), NC Chamber, NC Restaurant Association, and the Green Industry Council.

## **PRESENTATIONS**

### **North Carolina Home Builders Association**

Chairman Iler introduced Ms. Lisa Martin, Director of Government Affairs, NC Home Builders. Ms. Martin thanked the committee and chairs for the opportunity to speak. She stated the immigrant community has played an important role in the construction industry. Each wave of immigrants from the Irish to Italian to German to Hispanic have been active participants in the industry, bringing their trade related experience and skills to enhance the quality of the finished product. Immigrant and American workers working beside one another is not a new development. Immigrants who have come to the United States and to North Carolina and joined the home building industry have been able to develop their skills, start their businesses and get a firm foothold in the middle class. There has been a significant presence of immigrants in the home building industry and in 2009, foreign born workers accounted for almost 21 percent of the workforce in residential construction nationwide. However, the influx of illegal immigrants to the United States is a concern for all business owners. The NC Home Builders do not support illegal immigration. They believe immigration is a federal issue and the National Organization of Home Builders has supported congressional efforts to examine illegal immigration and find way to appropriately address the problem. They believe that a significant driver of illegal immigration is a broken legal immigration and visa system in the United States. The first question staff had asked speakers to address was what can the state do to help the construction industry deal with issues related to immigration? The NC Home Builders were willing participants in the discussion last year for HB 36 regarding E-Verify and agreed that the home building industry and their members would be subject to the requirements of the E-Verify system. However, the majority of NC Home Builders members (not all general contractors or companies are members) are small businesses and would be exempt from E-Verify. Many of these businesses are much smaller now than they were and hopefully that will change.

Ms. Martin continued her comments, explaining there are some concerns with the E-Verify system. The first concern is employer liability. Under the mandatory E-Verify system, all employers should be held liable for the work authorization status of their employees. They should be required to run their employees through the E-Verify system if they meet the threshold and NC Home Builders agrees with this mandate. However, the government should not create a cross-liability by making those employers responsible for sub-contractors. If a subcontractor has individuals that work for them, the general contractor can only be expected to rely on the information given to him by his subcontractors. As with current law, employers who knowingly use subcontract labor to violate immigration laws, should be prosecuted.

Ms. Martin states that the second concern is federal preemption. If the federal government ever gets their hands around the issue and implements an immigration program, NC Home Builders would want to insure that the state program didn't preempt any of the federal requirements.

The majority of the members are small businesses and they don't have access to the internet. A phone verification system or be given a period of time to get the employee verified would be beneficial. Construction hires are often done on site and have to rely on the information on hand, to act in good faith and abide by the law but to be allowed to have some timeframe that will allow the person hiring to get back to the office and process the paperwork provided by the potential worker.

Ms. Martin explained that the "phasing in" issue is cause for some concerns because most members of the NC Home Builders are not subject to the very large company requirements, but the NC Home Builders would be supportive in adjusting those deadlines to make it easier for larger companies that are having trouble complying with E-Verify requirements and HB 36 at this time.

Ms. Martin stated that the second question was what are the practices that other states have implemented in addressing issues related to immigration that would be helpful to your industry in NC? Ms. Martin stated that there are many states this year and in previous years that have proposed and/or passed legislation to address immigration. These requirements range from mandatory use of E-Verify to asking for identification from people that are stopped for other reasons to requiring schools and hospitals to inquire about the immigration status of students and patients. At this time the NC Home Builders declines to take a position on any measure other than the support and willing compliance with the requirements in HB 36. The NC Home Builders Association and the entire construction industry need a strong and ready work force. For this reason, they are interested in what other states have done with respect to guest worker programs. The association maintains strong support for vocational education programs for construction trades and for training and re-entry programs for workers laid off during the recent economic downturn.

Ms. Martin addressed the last question concerning the practices that other states have implemented in addressing issues related to immigration that would be harmful to the construction industry in North Carolina. Ms. Martin stated that the association would rather not take a position on any of those measures.

Representative Faircloth was recognized and asked if the building industry is aware of any organized worker's visa type programs that are available. Ms. Martin replied not at the state level, but Dave Simpson with the Association of General Contractors and their organization would include the larger companies that would have the need for a large number of workers on a job. The NC Home Builders Association has not been involved in any such program.

Representative Folwell was recognized and asked if we did a better job in K-12 education of teaching kids to use their hands and not their thumbs, would that help produce a more "job ready" work force. Ms. Martin replied that absolutely the vocational education system in the high school is important to the industry. Representative Folwell followed up with a comment regarding a recent graduate from high school and any regrets he had in his high school resume. The young man had responded to Representative Folwell that he should have taken more vocational education classes instead of so many AP classes and he regretted not being able to work with his hands more during his K-12 experience.

Representative Starnes was recognized and asked why the construction industry hires so many Hispanic workers with unemployment so high and a large pool of people to draw from. Ms. Martin didn't have an answer other than an availability issue and the skill level is higher for some trades with the Hispanic population.

Representative Warren was recognized and asked what is the average pay, the length of employment, turn-over rates and does the job come with benefits in the construction trade. Ms. Martin responded that most of the employees are generally paid more than minimum wage. Those employers that can do provide benefits. Many of the members have laid off workers and then hire them back when permits are approved due to the economy.

### **Carolinas AGC (Associated General Contractors)**

Chairman Iler introduced Claudia Dodgen, Vice-President Employee Services, Crowder Construction Company and Member, Human Resources Committee, Carolinas AGS. Ms. Dodgen read from a handout (Attachment #3.)

Representative Stevens was recognized and asked about the statement of “avoiding legislation that creates more red tape and paperwork”. She asked if with the implementation of E-Verify, are there other state procedures that could be eliminated. Ms. Dodgen replied that the recent Davis-Bacon Law changes have added a huge administrative burden to the construction industry and competitive wages are needed across the industry, but contractors are dealing with changes when someone goes on and off a job and how that paperwork is certified. Small contractors are struggling with the burden of figuring out the law that is federal legislation. If your company is awarded a Davis-Bacon job, you are required to pay a certain rate and sometime other benefits.

Representative Warren was recognized and asked Ms. Dodgen if she has any recommendations that are state requirements that we may be able to address to submit those to the Committee.

Representative Cleveland was recognized and made the comment that if the rest of the industries and businesses in North Carolina had been as proactive as Crowder Construction has been, we wouldn't be having the problems we are having now.

Representative Starnes was recognized and asked if there was a requirement when work is subcontracted if E-Verify is required to be used by the subcontractors. Ms. Dodgen answered that based on the size; the subcontractor may be subject to the E-Verify guidelines and on some federal contract jobs that may be the case. At the state level until the deadlines hit, based on company size, there is no E-Verify requirement. Crowder does require that all subcontractors comply with IRCA. (Immigration Reform and Control Act)

Representative Starnes was recognized for a follow up clarification, asking about HB 36, if you have less than 25 employees, you are exempt from E-Verify, which was correct. Ms. Dodgen stated that if a subcontractor was not willing to sign an affidavit regarding IRCA, they were not allowed to work on a Crowder jobsite.

Representative Faircloth was recognized and asked if Crowder was having any problems securing enough workers. Ms. Dodgen responded that the company has plenty of potential workers due to the economy; however, finding good craft worker with a good work ethic is a challenge. The Hispanic community has the craft skills and the work ethic to fill the void that was experienced in 2007 before the recession.

Representative Jones was recognized and asked if any other states where Crowder does business have the 25 employee threshold for E-Verify. Ms. Dodgen replied that the state of Georgia has gone with staggered implementation with a 50 employee minimum.

Representative Jones was recognized for a follow up and asked if there were any computer systems in place that could assist these smaller companies to make it easier for them to comply. Ms. Dodgen stated the Carolina's AG committee is looking for answers in this area. The cost has to be relevant for this to be a reality.

### **North Carolina Growers Association**

Chairman Iler recognized Lee Wicker, Deputy Director of the North Carolina Growers Association.

Mr. Wicker also stated that agribusiness is the number one industry in NC generating over 70 billion dollars in annual revenues and employing over 20 percent of the workforce in NC. North Carolina Growers Association (NCGA) is a 750 member farm cooperative that exists primarily for the purpose of assisting farmers in complying with federal and state immigration labor and worker protection laws. The farms grow tobacco, sweet potatoes, cucumbers, Christmas trees and many more labor intensive diversified crops from the mountains to the coast. NCGA is the largest user of the federal H-2A program in the nation and will likely employ over 7,000 legal foreign workers in North Carolina this year. H-2A is a temporary non-immigrant agriculture guest worker program administered at the federal level by the US Departments of Labor and Homeland Security, and on the state level by the NC Departments of Labor and Commerce. The members of this group have made it possible to grow labor intensive crops and comply with the law. H-2A is a classic story of an over

regulated government program, sometimes good but more often bad and occasionally ugly. While presenting testimony in Washington DC, Mr. Wicker has discussed why North Carolina farmer like and rely on H-2A, what is broken in H-2A, what needs to be done to repair H-2A so more farmers can and will participate in the program and what will likely happen to domestic fruit and vegetable production if reforms are not made. Mr. Wicker stated that our country can have a reasonable, fair and predictable agriculture guest worker program that treats workers well and carefully balances the critical elements of worker protections, preference for US workers and economic viability for our farms. A workable program would solve the systemic problem of a largely unauthorized temporary work force on our farms. Mr. Wicker stated that it is clear there is bipartisan political agreement that the current program is broken and in need of reform. Farmers and farm workers want to comply with labor and immigration laws, congress must take action to make this possible. The NCGA Board of Directors voted unanimously to endorse US House Judiciary Chairman Lamar Smith's agriculture reform program, HR 2847 The American Specialty Agriculture Act and Senate Bill 1384, The Harvest Act. These two measures offer substantial improvements to the agriculture guest worker program and would generate hope and inspire farmer and farm worker confidence in complying with the law. The NCGA board also voted to support Chairman Smith's mandatory E-Verify bill because the Association is not afraid of checking employees.

Mr. Wicker stated that a resolution by the North Carolina General Assembly encouraging Congress to reform the H2A program would show strong support for the North Carolina farmers who are going to great expense to insure they have a legal workforce. The resolution should also acknowledge that as Americans attain higher levels of education and increasingly reject farm employment, especially seasonal work, that a predictable and sustainable legally admitted temporary foreign work force will be needed to secure the labor intensive agriculture production into the future. A strong resolution will send a powerful message to Congress that critical reforms are needed now. Other states have already passed these resolutions. The North Carolina General Assembly should follow Georgia's lead in appropriating funds to the Department of Agriculture earmarked to hire an employee whose exclusive role is to develop easy to understand educational materials for farmers to facilitate compliance with respect to labor, employment, worker protection, and immigration laws. Another measure that could be adopted would be a cost share program that helps farmers that participate in the legal guest worker program to defray a portion of the staggering fixed program costs that are incurred when bringing legal workers to North Carolina.

Mr. Wicker continued that in 2009, 96 North Carolina House members sponsored such a program called the Agriculture Relief Act, including some members of this Committee. This type of program would be a positive, proactive step that acknowledges and rewards farmers' compliance with the law and encourages other to do the same. Unfortunately, the Agriculture Relief Act was blocked in the Senate for political reason.

Mr. Wicker indicated that the agriculture sector, especially small family farmers appreciate the provisions in the existing state E-Verify law that implements enforcement in phases and does not require employers with less than 25 employees to participate, however, recognizing that as a percentage of the workforce, agriculture has the highest number of unauthorized workers among all sectors of the economy, Mr. Wicker recommended that the NC General Assembly could pass one piece of additional legislation that borrows one of the concepts from Chairman Lamar Smith's original E-Verify proposal which offered agriculture an additional temporary transitional period by not requiring returning farm workers to be verified for a few years. This type of provision buys time for agriculture to achieve compliance while we all wait for an encourage Congress to act.

Representative Warren was recognized and asked if the H-2A program has a limit of the number of people allowed in each year. Mr. Wicker responded that there is no cap.

Representative Cleveland was recognized and stated that he would be more than willing to sponsor a resolution.

Representative Stevens was recognized and stated that anyone who has applied to be here and been given permission to be here is not an illegal. She asked if H-2A documentation is submitted to the State so others are aware that these workers are here legally. Mr. Wicker responded that all the workers are issued a visa by the US Department of State. There is extensive background screening that captures all 10 finger prints twice; they are run through the Homeland Security Database, FBI Database, they are interviewed one on one to insure they don't have ill intent when they cross the border intending to stay in NC. They are given a Visa and then screened again when they approach the border by border patrol and they are issued an I-94 card. The I-9 is completed through a centralized orientation. It's a huge undertaking to coordinate 750 farmers with 7,000 workers in a timely manner and be in compliance at the base rate of \$9.70 per hour. 85 percent return year after year and want to stay and work.

Representative Starnes was recognized and asked if the 7,000 workers was an increase or decrease. Mr. Wicker responded that the peak was 10,000 workers until the federal tobacco buyout and the number then dropped to around 5,500 and has picked back up. If Hurricane Irene had not wiped out the tobacco crop in eastern NC, he indicated that there would have had a shortage of workers for the sweet potato harvest.

Representative Folwell was recognized and asked if the workers would be eligible for unemployment in NC. Mr. Wicker responded absolutely not. The employment service checks with the federal government before employment benefits are granted for unemployment insurance.

Representative Folwell was recognized for a follow up question and asked if the growers have ever received an experience modification form similar to what every other company is receiving at this time. Mr. Wicker didn't know the answer to that question. The average member employees an average of 9 workers. The majority of the membership are small family farmers so the best guess would be no.

Representative Folwell asked if one of these workers did get into the Employment Security Commission of NC, would that small farmer receive an experience modification bill associated with the benefits that worker was receiving. Mr. Wicker deferred the question to the Department of Commerce.

Representative Folwell stated there is close to double digit unemployment in NC and the underemployment is even higher. He asked Mr. Wicker if, as a citizen of this state, he had any creative ideas on how we can get North Carolinians back to work so this program wouldn't be as necessary. Mr. Wicker replied that their association doesn't just employ 7,000 legal foreign temporary workers. They also employ 1,000 other United States workers, and yes, they are usually the equipment operators and supervisors with a higher skill set and pay rate. The seasonality of the work is the largest challenge. The US worker will go to the farm and work for one day to make \$150.00, but they only want to work that one day. When they are ready to work again, the crops will be rotten in the field.

Representative Faircloth was recognized and asked how many growers are in the market that are not members of the Association. Mr. Wicker responded that his best guess was around 2,000. At the peak of harvest there are approximately 90,000 workers in the state. If that's the right number, only 10 percent are H-2A workers. The NC Department of Labor Agriculture Safety and Health Inspections include migrant housing; the number is 15,000 beds certified last year.

Representative Faircloth was recognized and asked how many of these in the workforce are illegal. Mr. Wicker responded that the best guess estimate is around 75 percent of season agriculture worker are here without the proper work authorization and that would be proportionate with North Carolina.

### **Immigration Works US**

Chairman Iler introduced Ms. Tamar Jacoby, President of Immigration Works USA. Ms. Jacoby read directly from a handout that is attachment #4.

Representative Piece was recognized and asked what amendments were made to the Alabama bill. Ms. Jacoby responded that the amendments have not been made public yet and those should be forthcoming in the next few weeks.

Representative Jones was recognized and asked if the number of immigrants stated in the presentation could be divided into separate categories for legal and illegal immigrants. Ms. Jacoby responded that there is no number that divides the two.

Representative Stevens was recognized and for several questions. First, what study was referred to in the presentation. Ms. Jacoby answered that the UNC study done in 2004 was used. Second, is one of the main oppositions for traditional citizenship labor unemployment? Ms. Jacoby responded that unemployment has been exceeded and the American workforce is more educated. In 1960, 50 percent of US men in the labor force were high school dropouts and now only 10 percent are high school dropouts. Third, while NC has the need for more legal immigrants to help with the workload, we don't have the power to bring those legal immigrants in nor the power to keep out the illegal immigrants that we don't need or want here.

Representative Folwell was recognized and asked if the report in the presentation was done by Jim Johnson at the Kenan Business School. Ms. Jacoby replied that, yes, he was the author of the report. Representative Folwell was recognized for

a follow up and stated that he had made a request to Dr. Johnson in 2006, 2007 and 2009 for the report and the back data that went into report. He was told that even though he was using the UNC logo that the report was done by him and his private consulting business and no one would have a right to it. Ms. Jacoby responded that the report itself is widely available on the web, but not the back data. There were several studies done in other states also. Representative Folwell was recognized for a follow up and stated that it's not the summary that's important, it's the questions that were asked and how the data was compiled. When someone uses States assets and the UNC logo, the citizens and taxpayers of North Carolina are entitled to the back data that resulted in the report that is published.

Representative Cleveland was recognized and stated that the report did not differentiate between legal and illegal immigrants and nobody in the room has a problem with people who are here legally, so the report from Dr. Johnson has no bearing on the Committee. The illegal aliens in North Carolina are costing in excess of 2 billion dollars each year, not to mention the criminal element that is coming along with them. That is the problem the Committee is charged to address and any suggestions would be helpful. Ms. Jacoby responded that E-Verify was a very good first step in addressing the problem, however, the complexity is the danger of throwing out those workers without bringing in a legal immigrant workforce. The industries in NC need a legal immigrant workforce with no way to provide that.

Representative Cleveland was recognized and stated the idea that illegals being forced out of the State is going to cause economic hardship is overblown and it would be a benefit to the State to have the illegals gone. After a raid on a packing plant where several illegal workers were removed, the plant reopened two days later with American workers filling the jobs. Ms. Jacoby replied that she does not condone illegal immigration; however, states such as Georgia, Alabama and Arizona have found that driving these workers out of the state has been bad for industry. The states are caught between a rock and a hard place on what can be done to help these companies get legal immigrant workers.

Representative Cleveland was again recognized and asked what was the actual monetary number for the loss in agriculture and what is the real truth since nobody has an honest figure. If the numbers were true, the state of Georgia would be back peddling and they aren't. Ms. Jacoby responded that NC is on the right path with E-Verify and time must be given to allow it work.

Representative Iler asked if the 25 employee number for HB 36 should be higher or lower. Ms. Jacoby answered that the number is a good balance. Other states such as Utah have a 14 employee threshold and Tennessee has a 10 employee threshold before E-Verify must be used.

Representative Iler asked if any solution in relation to a state issue ID have been proposed in other states. Ms. Jacoby stated she had not seen this in any state than for guest worker programs.

Representative Warren was recognized and asked about any potential programs that would transition people from the unemployment line or penal system to the fields. Ms. Jacoby responded that Georgia had tried this and the results were not promising. Workers were fleeing the fields around 3:00 in the afternoon and it was harder work than they want to do. Representative Warren was recognized for a follow up and stated that E-Verify does nothing to stop identity theft.

Representative Cleveland was recognized for a comment regarding a large drug bust in Rockingham County confiscating \$600,000.00 and over 1,000 pounds of marijuana from two illegal aliens.

At this time, several members of the audience stood and made the statement that they were "illegal and unafraid". These demonstrators were removed from the committee room and three arrested for disorderly conduct.

Chairman Iler stated that demonstrations and outbursts will not be tolerated by the committee.

He announced that the next meeting is tentatively scheduled for March 28<sup>th</sup> at 1:00 pm in room 643. The meeting adjourned at 2:55.